



**For Immediate Release**  
**February 5, 2013**  
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## **Runner Says Retroactive Tax on California Entrepreneurs 'Unwarranted and Unfair'**

SACRAMENTO – George Runner today urged the Franchise Tax Board to reverse a controversial staff decision seeking millions in retroactive taxes from California entrepreneurs and small businesses.

"As an elected official and taxpayer advocate, I cannot remain silent while state tax officials punish California taxpayers who in good faith followed our laws," said Runner.

In a [letter](#) to the three members of the Franchise Tax Board, Runner calls FTB's [December 2012 staff action](#) "unwarranted and unfair to taxpayers."

In his letter, Runner explains that the Second District Court of Appeal's decision in *Cutler v. Franchise Tax Board* does not require FTB to take this action. He warns that it "sends entirely the wrong message to investors, entrepreneurs and job creators doing business in our state."

Runner joins a growing bi-partisan chorus of California legislators, newspapers and concerned citizens decrying the controversial FTB staff action and calling for its reversal.

Elected in November 2010, George Runner represents more than nine million Californians as a member of the State Board of Equalization. For more information, visit [www.boe.ca.gov/Runner](http://www.boe.ca.gov/Runner).

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TEXT OF RUNNER LETTER

February 5, 2013

Dear Members of the Franchise Tax Board:

I am writing to urge your reversal of a December 2012 Franchise Tax Board action forcing thousands of small business owners to pay millions in retroactive taxes. Although FTB took this aggressive action in response to a court decision, the scope of FTB's action is unwarranted and unfair to taxpayers.

In *Cutler v. Franchise Tax Board*, the Second District Court of Appeal found unconstitutional the qualified small business stock exclusion. The court held that the exclusion discriminated against non-California corporations in violation of the commerce clause because they could not also claim the exclusion. In its decision, however, the court did not direct California to seek back taxes from those who had claimed the exclusion in prior years. That determination was made solely by FTB.

Understandably, affected taxpayers are outraged by this action. They made business decisions in good faith based on existing California tax law. It is not possible for them to undo these decisions in response to FTB's retroactive actions.

FTB's action sends entirely the wrong message to investors, entrepreneurs and job creators doing business in our state.

As you are aware, the Board of Equalization serves as the final arbiter of FTB appeals. In this important capacity, BOE interprets and applies the state's franchise and income tax laws. In 2010-11, BOE received 954 appeals of FTB actions and issued 378 decisions.

We anticipate a significant number of appeals from taxpayers protesting the unfairness of these retroactive assessments, which will place a burden on the Franchise Tax Board. Once these appeals are denied at the FTB protest level, they will come before the Board of Equalization, creating additional cost and workload for BOE.

As FTB board members, it is within your power to revisit this decision and put forth policy that is fair to taxpayers. Under the Taxpayer Bill of Rights, it is your statutory duty to do so.

I look forward to seeing this matter addressed and corrected. Should you have any questions, please do not hesitate to contact me.

Sincerely,

GEORGE RUNNER

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